IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 123 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ASHOKKUMAR R PATIL

Versus

STATE OF GUJARAT

Appearance:

MR VIVEK BAROT with Mr. PITAMBER ABHICHANDANI for Petitioners
Mr. K.P. Raval for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE A.R.DAVE

Date of decision: 18/03/97

ORAL JUDGEMENT (Per Soni,J.)

The appellants original accused nos. 1 and 5 have filed this appeal against the judgment and order dated 12th February, 1988 holding them guilty under Sections 302 and 201 of the Indian Penal Code in Sessions Case no.65/1987 by the Additional Sessions Judge, Surat. By the said judgment, they are sentenced to undergo life

imprisonment under Section 302 and no separate sentence is awarded under Section 201.

Facts leading to prosecution of appellants and five others are as under:

Deceased Meenaben was married with appellant no.2(original accused no.5) some nine months before the date of incident. She was residing with her husband in room no.14 of Hudco Society, Bardoli. Her marriage with appellant no.2 was not liked by appellant no.1(original accused no.1)-elder brother and his wife. After marriage, said Meenaben stayed at her parent's house as accommodation was insufficient. Thereafter, room no.14 was hired after a month or two and Meenaben resided with her husband. On the day of incident i.e. 6th February, 1987 Meenaben had gone to market where she met her mother-Induben(PW 3). She told her that her elder brother in law , sister-in-law and younger brother-in-law are harassing her and that they are also quarrelling with her. At that time Meenaben was advised by her mother that among Rajputs marriage is not broken easily and as such she should carry on wisely. Meenaben used to tell her mother about such things even prior to the day of incident whenever she met her in the market. According to the prosecution dowry of Rs.17,000/- was agreed to be paid by parents of Meenaben out of which Rs.15,300/- were paid in cash and Rs.1700/-remained due. To collect the balance amount, appellant no.1 and one Raju had gone to father of Meenaben when father of Meenaben promised to pay. At that time they had threatened that if the money is not paid, he would have to face dire consequences. Meenaben had also complained about the torture on that day. Mahendrabhai-brother of Meenaben was sent to call her. Though he went thrice, Meenaben was not sent for one or the other reason. When Mahendrabhai last went to call Meenaben, appellants who were present in the house asked him as to what is the hurry and said that she may come next day. Thereafter all the accused conspired and assaulted Meenaben, when accused nos.2 and 5 caught hold of her legs and accused nos.6 and 7 caught hold of her hands and the appellant no.1 and other accused throttled her. Thereafter, kerosene was poured on her and she was set ablaze. When the appellants and brothers of Meenaben came to know about the incident they rushed to the house where they found Meenaben lying naked. They saw burns on her neck portion and they covered the dead body. Mother of Meenaben (PW3) gave complaint before the Police Inspector, Bardoli who registered the offence. The offence having been registered, investigation was carried out against the accused and on completion of the same

charge-sheet was submitted. As the offence was one triable by the Sessions Court accused were committed to the Court of Sessions. The accused pleaded not guilty to the charge and claimed to be tried.

The learned Additional Sessions Judge, Surat then framed the charge against the accused, recorded necessary evidence and after hearing the learned Advocates, acquitted the accused nos.2, 3, 4, 6 and 7 and recorded conviction against the accused nos.1 and 5 who are appellants before this Court.

Being aggrieved by the said judgment and order, the present appeal is preferred.

There is no dispute about the fact that Meenaben died a homicidal death, however , the question is whether Meenaben died due to asphyxia or due to burns and asphyxia. Question though academic, we would like to answer. To answer this question, it will be relevant to refer to the postmortem notes. We may hasten to say that the Doctor who had performed the postmortem has given evidence casually and learned Judge has accepted the same mechanically and without any serious application of mind. P.M. notes Exh.17, reads as under(only relevant part is extracted).

Column no.7 reads as under (only relevant portion): female about 20 years old, Hindu.....(1)Nine glass bangles of red colour. Column no.8: No clothes. Column no.13: Eyes open and burns, tongue outside of the mouth, mouth semi-open, frothy fluid from nostrils and mouth. Column no.14: Skin burns all over the body. Column no.15: Skin burns, nothing particular. Column no.16: (1) Both legs flexed. (2) Both hands flexed. Column no.17: Skin burns all over the body..... Column no.20G: 3rd and 4th tracheal ring fracture.....mouth semi-open, teeth intact, tongue outside of the mouth. Column no.23: Probable cause of death is asphyxia due to tracheal injury.....

On 6th February, 1987 when Meenaben died it appears that a message was sent to the Police Station in the name of the father of deceased Meenaben that she has died while she was cooking in the kitchen. It was registered as accidental death no.3/87 under Section 174 of the Criminal Procedure Code. On this Vardhi being registered the Police Station Officer had informed the Police Sub Inspector Bhikhabhai PW 11 of the same at 11.00 p.m.. He then proceeded to the scene of offence and recorded statement of some witnesses. Thereafter on

10th February, 1987 at about 11.00 a.m. Induben-mother of deceased gave a complaint being CR no.20/87 under Section 498A of the Indian Penal Code. The Police Station Officer upon being directed by PSI registered the offence- and further investigation for the same was carried out. Thereafter, the Investigating Officer received the postmortem notes on 18th February,1987 wherein at column no.23 it is stated that the death is due to asphyxia. The Investigating Officer therefore applied to add charge under Section 302 of the Indian Penal Code and accordingly that charge was added and the investigation then commenced in that direction. In the course of investigation, one Natubhai and his wife Bhanuben have given statements to the effect that deceased Meenaben had given her blouse for repairs to Bhanuben in the morning of 6th February, 1987 saying that she wanted that blouse at the earliest as she has to go to her parents' house. When Meenaben inquired for that blouse in the evening the same was not repaired and Bhanuben told her that she will just repair it and she may come and collect it after a short while. Bhanuben then repaired that blouse. As Meenaben did not come to collect it she shouted for Meenaben ,however, Meenaben did not respond. She therefore went to the room of Meenaben. She found the doors closed. There was no light in the room, however, she found some light in the kitchen room at the back. She then opened the door and saw Meenaben lying flat on the floor. The elder brother of Meenaben's husband i.e. appellant no.1 was sitting over her body while the respective legs of Meenaben were held by her husband-the appellant no.2 and the younger brother of her husband i.e Raju. Some two unknown persons have caught hold of her respective hands. Having seen so she immediately returned home and became unconscious. It appears that she must have been horrified by the scene. Bhanuben had died before she could depose before the Court but this statement of hers is tried to be proved and established by the evidence of her husband to whom she has immediately narrated this incident which was seen by her and in our opinion her husband Natubhai, P.W.9 has deposed the same accordingly.

The evidence of Natubhai is challenged on number of grounds namely, the story is improbable; he is a neighbour and an interested witness, and delay in disclosing the fact. It is contended by learned Advocate Mr. Barot that when Meenaben herself was able to stitch well why should have given her blouse for repairs to Bhanuben. This conduct of Meenaben, in our opinion, does not appear to be unnatural. There may be number of reasons why Meenaben gave her blouse to Bhanuben for

repairs. In our opinion, the probable reason is that Meenaben may not have necessary equipment for repairing. This appears to be the most probable reason as in the Panchnama of the scene of offence no sewing material and/or machine are found from the house. Secondly, Meenaben may not have had sufficient time to stitch the same as she was required to go in the evening at her parents' house, she being the only female member in the house had to prepare food for the members of the family. This apart, there may be numerous grounds for not repairing her blouse personally. Simply because a person knows to repair but does not carry out the repairs himself, it cannot be inferred that the conduct of giving an article for repairs by such person to another person is an unnatural one and for some ulterior purpose to create evidence.

Evidence of Bhanuben and Natubhai PW 9 is alleged to be of interested persons , they can equally be said to be interested in the accused being their neighbours. Be it that Bhanuben had disclosed the incident late. But such delayed disclosure by itself does not lose or weaken the truthfulness and acceptability in absence of any special reason on record. There are number of imponderables which may delay to disclose certain information. No question is put to Natubhai P.W.9 to explain this delay in disclosure. In absence of that blouse produced by Bhanuben is proved to be of Meenaben by PW 3 -mother of Meenaben. The fact that the said blouse is of Meenaben is also not disputed by the defence.Thus, the fact of blouse of deceased produced by Bhanuben makes more probable the story narrated by her to her husband-Natubhai P.W.9 . This say of P.W.9 gets corroboration from medical evidence. Thus, the evidence of Natubhai P.W.9 proves involvement of appellants and one Raju-younger brother of appellant no.2 in commission of offence.

This apart, evidence of mother, father and brother of deceased PWs 3, 4 and 5 respectively prove demand of dowry. The learned Additional Sessions Judge has accepted this evidence and we do not find any reason not to agree with it. The evidence of Mahendra PW 5 that he had gone thrice to the house of Meenaben to fetch her is cogent and convincing. When he had gone there for the third time appellants were present there and he was told there that there is no hurry to send her and that she may come in the morning of next day. Then, after some time one Dilip Manga (original accused no.6) came with information that Meenabhabi has died of burns on account of pouring kerosene. It is in the evidence of Mahendra

PW5 that in the evening of 6th February, 1987 when he went to the house of Meenaben at about 7 O'Clock appellants alongwith one Vijaysing were present and were taking supper. Thus, it is clear from the evidence of Mahendra that in the evening of 6th February,1987 appellants and said Vijaysing were present in the house of Meenaben and thereafter they were informed about the death of Meenaben. The postmortem report shows and suggests that Meenaben had died of asphyxia. It is not even suggested by the defence that she was asphyxiated due to strangulation. Atleast appellant no.5 husband is required , no doubt, as an accused, he is not bound to speak if he does not want, yet would have explained how she was asphyxiated.

It is in evidence that Bharatsing, PW.4 has initially given information that it is an accidental death. From the postmortem performed on the dead body, cause of death according to the Doctor is asphyxia probably due to tracheal injury. In the postmortem note it is also stated in the opinion column that to know the exact cause of death viscera is sent for chemical analysis to the Forensic Science Laboratory. However, report of viscera is not on record. Looking to the fracture of the third and fourth tracheal rings, the probable cause of death is opined to be asphyxia and that is not disputed by the defence. Thus, the initial information alleged to be given by the father of deceased of an accidental death stands negatived by the opinion given by the Doctor in the postmortem notes. This apart the fracture of the third and fourth tracheal ring suggest and is more probable with the possibility of throttling. Unfortunately, P.M. note does not refer to whether or not there were external injuries on the throat or not. However, the fact remains that the lady died due to asphyxia. This part of medical evidence in our opinion corroborates the say of Natubhai PW.9. Thus, it is clear that deceased had died a homicidal death and is neither an accidental nor a suicidal one. It is also clear from the postmortem note that she had not died of burns. We will hereinafter show that burns are caused to destroy the evidence of homicidal death due to throttling. The question is who throttled her and who set her on fire. Natubhai, PW.9, was informed by Bhanuben-his wife that when she went to deliver the blouse to deceased Meenaben she saw the appellants and some other persons manhandling Meenaben. Meenaben was lying aflat on the floor, appellant no.1 had climbed over her chest, the appellant no.2 held one of her legs and the other accused had caught hold of her other leg and hands and some time later she learned that Meenaben had

died of burns. Thus, from the evidence of Natubhai and brother Mahendrasing PW.9 and PW.5 respectively the fact is established that appellants were in the house in the evening of the fateful day. There is no doubt about the fact that the deceased was residing with her husband in that very house and the appellant no.1 was residing in the adjoining house. When PW.5 Mahendrasing went to fetch Meenaben in the evening at 7.00 p.m. the accused told him that he may take her with the permission of his brother. The appellant no.1 was in the adjoining room at that time. Meenaben was not sent on that day. Thus, from this evidence it is established that Meenaben and accused were in their room and appellant no.1 was in the adjoining room. Thereafter Bhanuben had gone to the room of Meenaben where she saw the appellant no.1 and 2 present alongwith other accused, who are acquitted by the trial Court. After PW.5 left the house of Meenaben one Dilip who was also arraigned as an accused and is acquitted, informed PW.5 that Meenaben is burnt by sprinkling kerosene. Sequence of events that PW.5 had gone to the house of Meenaben to fetch her, there accused and Meenaben were taking supper; the appellant no.1 was present in the adjoining house, Bhanuben wife of PW.9 had gone to deliver the blouse to Meenaben; she saw appellants and other accused in that room manhandling Meenaben. She immediately disclosed the same to her husband; he then heard that Meenaben had died of burns by sprinkling kerosene suggests that appellants were in the room at the time when Meenaben died. Ostensible cause of death is burns, however, the post mortem note reveals that she had died of asphyxia. The postmortem also reveals that the burns were antemortem. When the burns are antemortem death may be due to burns. Fracture of third and fourth tracheal rings shows throttling. The prosecution has established that the appellants were in the house just before and at the time of incident as per the evidence of PWs 5 and 9. PW.4 on receipt of information that Meenaben is burnt has reached the house where he found Meenaben lying dead on the ground in a naked position and burnt condition. When he reached there none was present in the house and he covered dead body by his lungi.

If anything goes wrong to one of the spouse at the time when they are expected to be in the house where only they reside it is the other spouse who has to explain as to how that wrong is caused or where was he or she at that time. It will therefore be necessary to read the further statement of the accused persons to see whether they have given any explanation about their absence and innocence at the relevant time. The

appellant no.1 has filed a written explanation Ex.38 when his statement was recorded under Section 313 of the Code. In that statement he has stated that" Myself, Vijay and others are working in one factory of diamond cutting. We have come in the factory since morning. My daughter Priyanka was sick. I had therefore straightaway from factory gone to the clinic of Dr. Bharat. My wife Sulochana, daughter-Priyanka and my uncle Ashok Gulab and Aunt Poojaben whose son was sick had also come at the clinic of Dr. Bharat of Bardoli which is located at the corner of Machi wad. We all came there. Then after children were examined by the Doctor and taking medicines we came home at about 8.30. There we learnt that Meenaben had died of burns while cooking.

The appellant no.2 in his further statement by an additional written statement has state as under:

"I had reported for duty at about 7.00 in the morning alongwith Ashok Ragunath, Vijay Ragunath, Dilip Mangaldas, Kalusing Gulab and maternal Aunt's son Ravindra Jagannath on the day of incident. After factory hours were over, I was preparing to go home. At that time my father-in-law Bharatsing came and told me that Meenaben has died while cooking. He asked me to go home and told me that he is going to Police station to inform them. I therefore immediately informed this fact to Dilip, Kalusing Gulab and Ravindra Jagannath. We then immediately came home and found Meena dead."

These further statements of appellants do not reveal the time when the factory is closed in the evening. Appellant no.1 says that he was in the clinic of Dr. Bharat at the relevant time. He also says that appellant , his wife, daughter, uncle and aunt were with him at the clinic of Dr. Bharat. No attempt is made by defence to corroborate this fact, either by examining Dr. Bharat or producing necessary case papers or by examining one of those who were with him in the clinic. This defence of appellant no.1 is falsified by further statement of appellant no.2. Appellant no.2 says that when he was informed by the incident by his father-in-law, he conveyed the same to appellant no.1 also. Father in law of appellant no.1 has denied to have gone to the factory of appellant no.1 and revealed the information. Hence, defence of either of the appellant cannot be believed. This apart from the postmortem note column no.20 sub-column pertaining to intestines semi digested food and gas are found from small intestines and gas and gaseous matter are found from large intestines. This suggests that she had taken her food few hours

before. The story as suggested by the defence that the accused were informed that she has died while cooking stands negatived not only by this medical evidence but also no cooking material is found in Panchnama of scene of offence. This conclusion gets corroboration from evidence of deceased's brother Mahendrasing PW.5 as he had seen appellant no.1 and deceased taking supper. It is therefore clear that appellants are not telling true facts before the Court. Thus, what PW 5 Mahendrasing found deceased Meenaben and her husband the appellant no.2 taking supper and that Meenaben was manhandled in the manner referred above by Natubhai the presence of appellants has been established by the prosecution and it is also accepted by the learned Addl.Sessions Judge.

Learned Counsel Mr. V.M. Barot contended before us that presence of the appellant no.1 has not been established by the prosecution beyond reasonable doubt and that the evidence of Natubhai, PW.9 cannot be relied upon. The appellant no.1 was in his own room and not in the room where the appellant no.2 and Meenaben resided. Room of appellant no.1 is adjoining to that of appellant no.2. Thus, in our opinion evidence of Natubhai, PW.9 if read with the evidence of Mahendrasing, PW.5 not only establishes presence of appellants but establishes involvement in commission of offence and the learned Judge in our opinion has rightly accepted their evidence.

In view of the above facts the appeal is liable to be dismissed and is hereby dismissed.

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